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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,892	05/05/2005	Walter Wolf	016906-0391	8121

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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

KOSANOVIC, HELENA

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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06/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/533,892

Applicant(s)

WOLF, WALTER

Examiner

Helena Kosanovic

HK

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 14-28.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

STEVEN B. MCALLISTER
**STEVEN B. MCALLISTER
SUPERVISORY PATENT EXAMINER**

Continuation Sheet (PTO-303)

Continuation of item 7:

1. The rejections of the claims presented in the Office action filed 6/6/2007 are maintained.
2. Amendment to claims 18 and 24 provides a grammatical consistency, and therefore has been entered because they are deemed to place the application in better form for appeal.

Continuation of item 11:

Response to Arguments

3. Applicant's arguments filed 6/6/2007 have been fully considered but they are not persuasive.
4. Regarding the applicant's arguments that "the C-shaped portion of the frame member is a separate requirement from the partially closed profile cross-section. In other words, there is a portion of the basic body that has a partially closed profile cross-section and a C-shape, and not merely a partially closed profile cross-section that is a "C-shape". " The examiner notes that on figure 1 of Pasch it is clear that cross member

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1 has a partially closed cross section, because of at least openings 12 and sidewalls 11, and a C-shaped portion 3, as discussed above and as is claimed. It is also noted that "a metal frame member" is not support in the specification as a separate member, but rather as a part of the claimed body member.

5. Regarding argument: "However, the instrument panel 17 of Pasch cannot be considered part of the cross member of claim 14, at least because there is no teaching or suggestion that the instrument panel is made from metal" the examiner notes that the transitional term "comprising", in claim 14, which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. (See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369,1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004), see also MPEP 2111.03). In this case at least elements 4 and 3 are made of metal (col. 2, ll. 20-22) and are considered frame metals. This arrangement is considered to meet applicant's recitation, therefore material of which element 17 is made is not excluded, as claimed. The examiner notes that Applicant's claims do not require that the entire body be formed of a single metal peace, as Applicant appears to argue.

6. Regarding the argument that "middle part 3 does not have a C-shaped section" the examiner disagrees because it is clear from figures 1 and 2 that the element 3 is wider than element 4, and is enclosed with three walls of element 3. Those 3 walls form C-shaped widened area for at least partially encircling the HVAC unit. Therefore the claimed limitation is met. It is also noted that "C-shaped" element in specification is

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recited as "U-shape" section, which is regarded as equivalent structure, indicated that there is some variability in the shape encompassed by "C-shape".

7. Regarding the applicants argument about combination of Pasch and Mochizuki references the examiner disagrees with the Applicant's argument which is discussed in previous Office Action.

Apparently the instant limitation is not distinct from applied prior arts.